

Starkweather & Associates

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DATE: November 1, 2005
FAX #: 1-571-273-8300
TO: Office of Petitions
FROM: Diann Herring, Assistant to Michael Starkweather
RE: Reply to Decision on Petition mailed 10-26-05 for Ronald Nasco

Number of Pages including cover page: 6

Docket No. 3023.2.1 CIP (mistakenly noted as 2.6)
Client Ronald Nasco
Serial No. 10/634,189 Filing Date Aug. 4, 2003
Assignee/Mark _____
Date Faxed November 1, 2005

Please acknowledge receipt of:

- ☐ Application _____ Pages
☐ Provisional ☐ Design ☐ Cont. ☐ Div. ☐ RCE
☐ Utility Total Claims _____ Indep Claims _____
☐ Drawings _____ Sheets _____ Figures _____
☐ Assignment ☐ Cover Sheet ☐ Fee
☒ Certificate of Transmission
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☐ IDS, ☐ Form SB/08 or 1449 ☐ References
☐ Issue Fee Transmittal
☐ Maintenance Fee Transmittal _____ Year
☐ Request for Certification for Non-Publications
☐ Response to Office Action
☐ Affidavit
☐ Amendment
☐ Extension of Time Petition _____ Months
☒ Copy of Decision on Petition _____
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☐ ATTORNEY: MWS - 34,441

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PTO/SB/21 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10634,189
	Filing Date	August 4, 2003
	First Named Inventor	Ronald Nasco
	Art Unit	3751
	Examiner Name	Charles E. Philip
Total Number of Pages in This Submission	Attorney Docket Number	3023.2.1 CIP (misnamed 2.6)

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks Copy of Decision on Petition, mailed Oct. 26, 2005		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Starkweather & Associates Cust No. 48309	
Signature	<i>Michael W. Starkweather</i>	
Printed name	Michael W. Starkweather	
Date	11/1/05	Reg. No. 34,441

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:		
Signature	<i>Diann Herring</i>	
Typed or printed name	Diann Herring	Date 1 November 2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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 PTO/SB/17 (12-04V2)
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 Effective on 12/08/2004.
 Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4918).

FEE TRANSMITTAL
For FY 2005
☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 40.00

Complete if Known

Application Number	10/634,189
Filing Date	August 4, 2003
First Named Inventor	Ronald Nasco
Examiner Name	Charles E. Phillip
Art Unit	3751
Attorney Docket No.	3023.2.1 CIP (misnamed 2.6)

METHOD OF PAYMENT (check all that apply)

☐ Check ☒ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☐ Deposit Account Deposit Account Number: _____ Deposit Account Name: _____

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee
☐ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☐ Credit any overpayments

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	0
Design	200	100	100	50	130	65	0
Plant	200	100	300	150	160	80	0
Reissue	300	150	500	250	600	300	0
Provisional	200	100	0	0	0	0	0

2. EXCESS CLAIM FEES

Fee Description

Each claim over 20 (including Reissues)

Fee (\$)

Small Entity Fee (\$)

Each independent claim over 3 (including Reissues)

50

25

Multiple dependent claims

200

100

360

180

Total Claims Extra Claims Fee (\$)

Fee Paid (\$)

- 20 or HP = _____ x _____ = 0

HP = highest number of total claims paid for, if greater than 20.

Independent Claims Extra Claims Fee (\$)

Fee Paid (\$)

- 3 or HP = _____ x _____ = 0

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

 Total Sheets Extra Sheets Number of each additional 50 or fraction thereof Fee (\$) Fee Paid (\$)
 - 100 = _____ / 50 = _____ (round up to a whole number) x _____ = 0

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Fees Paid (\$)

0

Other (e.g., late filing surcharge): Balance of fee for Petition for Unintentionally Delayed Benefit Claim

40.00

SUBMITTED BY

Signature	<i>Michael W. Starkweather</i>	Registration No. (Attorney/Agent)	34,441	Telephone	801-272-8368
Name (Print/Type)	Michael W. Starkweather	Date	1 November 2005		

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1460, Alexandria, VA 22313-1460.

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9035 S 1300E
SUITE 200
SANDY, UT 84094**COPY MAILED****OCT 26 2005****OFFICE OF PETITIONS**In re Application of
Ronald Nasco
Application No. 10/634,189
Filed: August 4, 2003
Attorney Docket No. 3023.2.6DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3) AND
UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed May 12, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of the prior-filed nonprovisional and provisional applications set forth in the amendment filed November 15, 2004.

The petition is DISMISSED.

A petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

The instant petition does not comply with item (2)

Petitioner has submitted \$1330.00. However, the surcharge fee required to accompany a petition under 37 CFR 1.78 is \$1370.00. See 37 CFR 1.17(t). As such, the petition will not be reviewed on the merits at this time. Petitioner must submit an additional \$40.00.

11/03/2005 WABDELRI 00000064 10634189

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1370.00 OP

Application No. 10/634,18.

Page 2

Further correspondence with respect to this matter should be addressed as follows:

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Alexandria, VA 22313-1450

By hand: Customer Service Window
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Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to Petitions Attorney Edward Tannouse at (571) 272-3228.



Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy